

² The Board notes that a appellant submitted additional evidence following the July 2, 2021 decision. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish entitlement to continuation of pay (COP).

FACTUAL HISTORY

On May 18, 2021 appellant, then a 50-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2020 she contracted COVID-19 after she was exposed while in the performance of duty, to coworkers who had tested positive. She related that she tested positive for COVID-19 and was hospitalized from November 6 to 11, 2020 and remained in quarantine and off work until January 8, 2021.

In support of her claim, appellant submitted treatment records from physicians at a healthcare facility relating to her November 6, 2020 hospitalization. These records noted diagnoses, including COVID-19 and pneumonia.

In a letter dated June 1, 2021, OWCP informed appellant that it had preliminarily determined that she had met the criteria for the diagnosis of COVID-19 proximately caused by her employment. It noted that she would be eligible for COP if her Form CA-1 was filed within 30 days following injury.

In a June 17, 2021 letter, OWCP requested that appellant provide evidence to substantiate her COVID-19 diagnosis, either in the form of a positive polymerase chain reaction (PCR) COVID-19 test result or a positive antibody or antigen COVID-19 test result, together with contemporaneous medical evidence that she had documented symptoms of and/or was treated for COVID-19 by a physician. It explained that, if no positive laboratory test was available, she should submit a COVID-19 diagnosis from a physician with a rationalized medical opinion supporting the diagnosis and an explanation as to why a positive test result was not available.

On July 2, 2021 OWCP accepted appellant's claim for novel Coronavirus (COVID-19).

By separate decision dated July 2, 2021, OWCP denied appellant's claim for COP, finding that she had not reported her November 5, 2020 injury on an OWCP-approved form within 30 days of the date of injury. It further noted that she could claim compensation for wage-loss resulting from the decision by filing a claim for compensation (Form CA-7).

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of

this title.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish eligibility for COP.

Appellant filed written notice of her traumatic injury (Form CA-1) on May 18, 2021. By decision dated July 2, 2021, OWCP denied her request for COP, as her claim was not filed within 30 days of the accepted November 5, 2020 employment injury. It noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of the accepted employment injury. Because she filed written notice of her traumatic injury claim on May 18, 2021, more than 30 days after the accepted November 5, 2020 employment injury, the Board finds that appellant has not met her burden of proof to establish entitlement to COP.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁶ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010). *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board